

U.S.S.N. 09/621,092

Filed: July 21, 2000

## RESPONSE TO OFFICE ACTION

## Remarks

Claims 28-30, 41, and 43-45 are pending.

## Rejection Under 35 U.S.C. § 102

Claims 30, 41, and 43-45 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,991,605 to Keritsis ("Keritsis"). Applicants respectfully traverse this rejection.

Keritsis does not disclose every element of the claimed devices. Keritsis does not disclose a keying surface on an outside surface of a distal end of the capsule, as required by claims 30, 41, and 43-45. For example, element 613 is a ridge which allows one tube to slide inside the second tube along the surface of element 623. Elements 613 and 623 run along the full length of their respective tubes, thus they are not located at the *distal end* of the capsule. Further, the combination of both tubes forms the complete capsule. Thus, neither 613 nor 623 are located *inside* the capsule. Similarly, element 619 is a smooth surface at an open end of one of the tubes. As noted in col. 6, lines 6-10, 619 "is configured to fit *inside* lip 622 of element 620" (emphasis added) (*i.e.* the second tube). The combination of both tubes forms the complete capsule. Thus, element 619 is located *inside* the capsule. Thus, none of the elements cited by the Examiner are keying surfaces located on an outside surface of a distal end of the capsule, as required by claims 30, 41, and 43-45. Further, Keritsis does not provide any motivation to modify its device so that the keying surface is located on the outside surface of a distal end of the capsule.

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Further, Keritsis mentions that its flavorant-adding-device can be "incorporated" into these smoking articles but does not provide a description regarding where it is placed within the articles (*see* col. 7, lines 51-63). Thus, Keritsis does not disclose or suggest a keying element that is adapted *to orient* the capsule within the inhaler, as required by claims 41, 43, and 45. Additionally, Keritsis does not disclose or suggest how or where one would place an indentifier for the drug to be placed in the capsule, as required by claims 41 and 42. Therefore claims 30, 41, and 43-45 are novel in view of Keritsis.

#### Claim Objections

Claims 28 and 29 were objected to as being dependent on a reject base claim. Applicants respectfully traverse this objection. As noted above, Keritsis does not disclose nor suggest all of the elements of the claimed device. Therefore claim 41, from which claims 28 and 29 depend, is novel; and claims 28 and 29 are allowable.

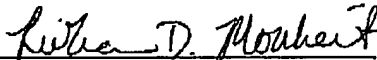
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**RESPONSE TO OFFICE ACTION**

Allowance of claims 28-30, 41, and 43-45 is respectfully solicited.

Respectfully submitted,

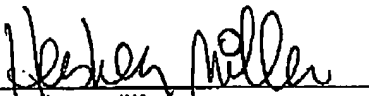
  
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**Certificate of Facsimile Transmission**

I hereby certify that this Amendment and Response to Office Action, and any documents referred to as attached therein are being facsimile transmitted on this date, July 8, 2004, to the Commissioner for Patents, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

  
Hershey Miller

Date: July 8, 2004